

PLEASE NOTE:

This copy of Ordinance No. 196.11 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 196.11

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS
AMENDING CHAPTER 213 OF TITLE V OF THE MILPITAS MUNICIPAL CODE
RELATING TO DAYTIME RESIDENTIAL ZONE NOISE LEVELS

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the Milpitas Noise Ordinance is codified in Title V, Chapter 213, Section V-213-2 of the Milpitas Municipal Code; and

WHEREAS, the Milpitas Noise Ordinance currently prohibits any person in any district zoned for residential use to make, continue or cause to be made or continued any disturbing noise between the hours of 10:00 p.m. in the evening to 7:00 a.m. in the morning; and

WHEREAS, the Milpitas Noise Ordinance does not regulate disturbing noise in any district zoned for residential use between the daytime hours of 7:00 a.m. in the morning and 10:00 p.m. in the evening; and

WHEREAS, the City of Milpitas has received a number of complaints regarding noise levels in residential zoned districts and wishes to amend the Milpitas Noise Ordinance to regulate any disturbing noise level that impacts public health and safety and the quality of life in residential areas; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the City Council determine this project is exempt under CEQA Guidelines Section 15061(b)(3) since there are no potential environmental impacts from regulating day and evening time noise levels.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE CHAPTER 213 OF TITLE V

Sections V-213-1 through V-213-3 of the Milpitas Municipal Code are hereby repealed in their entirety and replaced with the text below to read as follows:

V-213-1 Declaration of Intent

The Council finds and declares that excessive sound and excessive vibration caused by sound are a hazard to public health and welfare, safety and the quality of life in residential areas; that persons living in residential areas are entitled to the reasonable use and enjoyment of their property without exposure to excessive sound and vibration; that everyone's right to use and enjoy their property must be exercised with respect to the right of their neighbor to use and enjoy their property; that the regulation of excessive sound and vibration in residential areas of the City of Milpitas is necessary to accomplish this purpose.

V-213-2 Definitions

2.01 "Ambient Noise Level" as used herein in this Chapter means the continuous equivalent-energy level (Leq) measured for a minimum of three (3) minutes, or until the Leq remains within a one (1) dB spread, and with the noise issue at silent. If the measuring instrument does not integrate the Leq instantaneously, the ambient shall be the average noise level displayed on the meter.

Deleted: during evening and early morning hours

Deleted: his

Deleted: his

Deleted: his

2.02 "Construction Site" as used herein in this Chapter means any site preparation, assembly, erection, substantial repair, alteration or similar action on any property.

2.03 "Decibel (dB)" as used herein in this Chapter means a unit for measuring the amplitude of sound, equal to twenty (20) times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micro-pascals.

2.04 "Disturbing Noise" as used herein in this Chapter means any sound or vibration caused by sound which occurs with such intensity, frequency or in such a manner as to disturb the peace and quiet of reasonable person of normal sensitivity residing in that area. It shall include, but not be limited to noise from the following sounds (this enumeration not being exclusive but only illustrative):

- (1) The use, operation, playing of any radio, television, musical instrument or instruments, phonograph, stereo, loud speaker, sound amplifier or other device for the production or reproduction of sound with louder volume than is necessary for hearing for any person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto.
- (2) The sounding of any horn or signal device or siren except as a danger warning.
- (3) The operation of any machinery or tool.
- (4) The continuous or recurrent acceleration of a motor vehicle or other engine while stationary ("revving" the engine).
- (5) Yelling, shouting, hooting, whistling, singing, or similar types of noise.

2.05 "Emergency" as used herein in this Chapter means any occurrence or set of circumstances involving actual or imminent physical danger, crisis, trauma, or property damage which demands immediate action.

2.06 "Equivalent Energy Level (Leq)" as used herein in this Chapter means the level of a steady state of noise that has the same sound energy as a given time-varying noise.

2.07 "Holiday" as used in this Chapter means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

2.08 "Person" as used herein in this Chapter means any individual, association, partnership, corporation or other private or public entity.

2.09 "Weekdays" as used herein in this Chapter shall mean any Monday through Friday that is not a holiday as defined herein.

2.10 "Weekends" as used herein in this Chapter shall mean Saturdays and Sundays, that are not holidays as defined herein.

V-213-3 Unlawful to Create or Permit Disturbing Noise

(a) Residential Zone Regulations.

3.01 It shall be unlawful for any person in any district zoned for residential use (under the provisions of Chapter 10, Title XI of the Milpitas Municipal Code) to make, continue, maintain, permit or cause to be made, continued, maintained, or permitted any Disturbing Noise that increases the noise exposure level by three (3) dB over the local ambient noise level measured from the property line of the noise source, or more than 65 dB measured from the property line of the noise source, whichever is more restrictive.

Deleted: The term

Deleted: d

Deleted: n

Deleted: any

Deleted: or

Deleted: on a public street

Deleted: 3

Deleted: The term

Deleted: p

Deleted: entity

Deleted: 2.04 Construction Site-a construction site for the purpose of this chapter is a parcel of real property on which any building or related improvement of road, walkway, pool or landscape, construction is taking place or to which construction materials, supplies or implements are delivered in connection with such construction activities.¶
2. 05 Emergency-shall mean any occurrence or set of circumstances involving actual or imminent physical danger, crisis, trauma, or property damage which demands immediate action.¶
2.06 Holiday-means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.¶

Deleted: 7

Deleted: ,

Deleted: 7

Deleted: to be made or continued

Deleted: d

Deleted: n

Deleted: between the hours of 10:00 p.m. in the evening to 7:00 a.m. in the morning

3.02 ~~It shall be unlawful for any person who owns, possesses, or controls any real property in any district zoned for residential use (under the provisions of Chapter 10, Title XI of the Milpitas Municipal Code) to make, continue, maintain, permit or cause to be made, continued, maintained or permitted any Disturbing Noise that increases the noise exposure level by three (3) dB over the local ambient noise level measured from the property line of the noise source, or more than 65 dB measured from the property line of the noise source, whichever is more restrictive.~~

Deleted: to be made or continued

Deleted: d

Deleted: n

Deleted: between the hours of 10:00 p.m. in the evening to 7:00 a.m. in the morning which is made within 100 feet of any building or place regularly used for sleeping purposes; and, disturbs any person(s) within hearing distance.¶

~~3.03 Notwithstanding any other provision of this Chapter and in addition thereto, it is unlawful for any person or any person who owns, possesses, or controls real property in any district zoned for residential use (under provisions of Chapter 10, Title XI of the Milpitas Municipal Code) to make, continue, maintain, permit, or cause to be made, continued, maintained or permitted any Disturbing Noise. It shall be prima facie violation of this Section if any Disturbing Noise is audible during the hours of 10:00 p.m. to 7:00 a.m. from a distance of fifty (50) feet from the property line of the noise source or from a distance of one hundred feet (100) from any nonstationary noise source. It shall also be prima facie violation of this Section if any Disturbing Noise is audible during the hours of 7:01 a.m. to 9:59 p.m. from a distance of one hundred feet (100) from the property line of the noise source or any nonstationary noise source.~~

~~3.04 The above prohibition against making, continuing, maintaining or permitting any Disturbing Noise in any district zoned for residential use shall not apply to the authorized collection of solid waste, recyclables, and/or yard trimmings by an authorized collector beginning at 6:00 a.m.~~

Deleted: 3

Deleted: causing to be made or continued

Deleted: d

Deleted: n

(b) ~~Site Construction Regulations.~~

~~3.05 No person shall engage or permit others to engage in construction of any building or related road or walkway, pool or landscape improvement or in the construction operations related thereto, including, delivery of construction materials, supplies, or improvements on or to a construction site except within the hours of 7:00 a.m. to 7:00 p.m. on weekdays and weekends. No construction work shall be conducted or performed on the holidays indicated in Section V-213-2-2.05 of this Chapter.~~

~~3.06 Exemption from Off-Site Construction Regulations.~~

Deleted: (c)

Deleted:

Exempt from the Off-Site Construction Regulations of this article are as follows:

- (1) Emergency construction and repair that is necessary for protection of life and property,
- (2) Operation preempted from local regulation by state law, such as construction of public school buildings,
- (3) Furnishing utility-type service including construction and maintenance of utility facilities,
- (4) Any work on an existing single-family or duplex (two-family) dwelling undertaken by the property owner,
- (5) Operation to construct and maintain facilities within the public right-of-way as deemed necessary by the Public Works Director, and
- (6) Any other circumstances where the City Manager deems that an exemption would be appropriate.

Deleted: Determination of Violation

Deleted: (a) . Notice of Violation. Notwithstanding Section V-213-5 and except in the case, after a verbal or written warning of a violation has been given, the City is satisfied that a person is acting in good faith and with deliberate speed to comply with Section V-213-3(b), a continuing violation of Section V-213-3(b) shall be cause for either a citation and stop work notice, an infraction as specified in Section V-213-5, or an abatement order issued by the City of Milpitas pursuant to Section I-20-4 of the Milpitas Municipal Code.¶
b) . Public Nuisance.

Sections V-213-4 through V-213-5 of the Milpitas Municipal Code are hereby repealed in their entirety and replaced with the text below to read as follows:

V-213-4 Public Nuisance.

~~The Council finds and declares that a violation of this Chapter shall constitute a public nuisance.~~

Deleted: if said violation disturbs the peace and quiet of one (1) or more persons in at least two (2) households

V-213-5 Violation as Infraction

In addition to such other remedies as are provided by law, the violation of this Chapter, may constitute an infraction under the provisions of I-1-4.09-1, I-1-4.09-2 and I-1-4.09-3 of the Milpitas Municipal Code.

Deleted: T

Deleted: shall

SECTION 4. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 5. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.